

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED
July 19, 2010

No. 09-40910
Summary Calendar

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

ROGELIO GARZA,

Defendant - Appellant

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 5:06-CR-959-1

Before WIENER, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

Rogelio Garza appeals the district court's judgment revoking his supervised release and sentencing him to serve twenty-four months in prison. According to Garza, the district court erred by concluding that he had committed a new offense and by using this finding both to cancel his release and as a basis for his sentence. Under Garza's view, the evidence adduced at the revocation hearing did not establish his commission of a new, marijuana-related offense. The abuse of discretion standard applies to our review of the district court's

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

decision to rescind Garza's release. *See United States v. McCormick*, 54 F.3d 214, 219 (5th Cir. 1995).

We disagree with Garza's arguments. Our review of the record shows no error in connection with the district court's conclusion that Garza committed the new offense alleged in the Petition For Warrant or Summons because the evidence adduced at the revocation hearing sufficed to show that it was more likely than not that Garza committed the disputed offense. *See* 18 U.S.C. § 3583(e)(3); *see also United States v. Hinson*, 429 F.3d 114, 117-18 (5th Cir. 2005); *United States v. Barksdale-Contreras*, 972 F.2d 111, 115 (5th Cir. 1992). Because the district court's conclusion concerning Garza's commission of the new offense was not erroneous, its use of this conclusion to revoke his release and sentence him likewise was not erroneous.

The judgment of the district court is AFFIRMED.